

Appeals Court Rules for Agee In Passport Case

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The U.S. Court of Appeals here said yesterday that the State Department had no legal authority to revoke former CIA agent Philip Agee's passport.

The court's 2-to-1 decision included a blistering, 68-page dissent with five draft indictments of Agee and seven lines of verse from Sir Walter Scott.

The majority agreed with U.S. District Court Judge Gerhard A. Gesell that Congress had not authorized a federal regulation that the State Department contended authorized it to revoke Agee's passport on national security grounds.

The State Department notified Agee, who now lives in West Germany, in December that it was immediately revoking his passport. The action came shortly after a New York newspaper reported that Agee, an outspoken critic of U.S. intelligence practices, had been invited to participate in trials of the American hostages in Iran. Agee has denied receiving such an invitation.

Yesterday, Judge Roger Robb, writing for himself and Judge Patricia M. Wald, said Agee's right to travel is constitutionally protected and cannot be regulated or stopped by revocation of his passport—unless Congress specifically authorizes such an action.

Under prior Supreme Court decisions, Agee's passport could have been revoked if he had been charged with a crime, Robb wrote. Gesell repeatedly raised this point with State Department lawyers during hearings in his court.

Even though some may feel that Agee's conduct—including allegations that he has publicly identified CIA

agents—may "border on treason," Robb said, that is not enough to support revocation of his passport. "We are bound by the law as we find it," he said.

In an emotional dissent, Judge George E. MacKinnon said the Constitution and laws were never intended to assist someone whose conduct "adheres to our enemies, causes serious damage to our national security and endangers the lives of our citizens."

The State Department was "well-advised to 'mark him well,'" MacKinnon said, quoting from Sir Walter Scott's "The Lay of the Last Minstrel."

MacKinnon said that revocation of Agee's passport was authorized under a federal law giving the president authority to act in hostage situations. National security concerns also justified the U.S. action, he said.

MacKinnon relied on affidavits, filed by the government and by Agee, to suggest that the ex-agent could be charged with five criminal violations, including treason, kidnaping and conspiracy to commit extortion.

"There are relatively few . . . citizens who have the same capability and vicious intent to damage our national security as has Mr. Agee," the judge wrote.